Merrow Machine Company *and* Yasmin Rivera. Case 34–CA–9476

March 18, 2002

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND BARTLETT

On October 26, 2001, Administrative Law Judge Joel P. Biblowitz issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

Dated, Washington, D.C. March 18, 2002

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] In his exceptions, the General Counsel contends that the judge erred by failing to analyze this case under the Board's decision in *Interboro Contractors*, 157 NLRB 1295 (1966), enfd. 388 F.2d 495 (2d Cir. 1967). We find no merit in this exception. Under *Interboro*, an individual employee's protest constitutes protected concerted activity if the employee seeks to enforce provisions of a collective-bargaining agreement. The issue presented in this case, however, is not whether Yasmin Rivera was engaged in protected concerted activity in protesting the determination that she should not receive a bonus under the bonus provision of the collective-bargaining agreement. Rather, the issue is whether the Respondent's refusal to allow her to rescind her subsequent voluntary quit was unlawfully motivated. In resolving this issue, we find that the judge correctly analyzed the case under *Wright Line*, 251 NLRB 1083 (1980), enfd, 662 F.2d 899 (1st Cir. 1981) cert. denied 455 U.S. 989 (1982).

Thomas Quigley, Esq., for the General Counsel.

Brian Clemow, Esq. and *Gregg Goumas, Esq. (Shipman & Goodwin)*, for the Respondent.

DECISION

STATEMENT OF THE CASE

JOEL P. BIBLOWITZ, Administrative Law Judge. This case was heard by me on August 16, 2001, in Hartford, Connecticut. The complaint, which issued on May 17, 2001, and was based on an unfair labor practice charge that was filed by Yasmin Rivera, an individual, on November 6, 2000,[1] alleges that Merrow Machine Company (Respondent) discharged Rivera on September 29 because she claimed her right to a bonus under the Respondent's contract with Local 249, International Union of Electronic, Electrical Salaried, Machine and Furniture Workers, AFL–CIO (the Union), in violation of Section 8(a)(1) and (3) of the Act.[2]

FINDINGS OF FACT

I. JURISDICTION

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE FACTS

Although the complaint alleges that the Respondent discharged Rivera, in actuality it did not discharge her but, rather, refused to allow her to rescind her quit. On the morning of September 14, she notified the Respondent that she was quitting and, later that day changed her mind, but the Respondent would not allow her to rescind the quit and remain in the Respondent's employ, and she worked for the next 21weeks and left Respondent's employ on about September 29.

The catalyst to the instant situation is the bonus system that is provided for in the contract between the Respondent and the Union effective from February 1998 to February 2001 (the Agreement). The bonus provision was not in the successor agreement because "both parties wanted it out." Although it is not necessary to discuss the details and calculations of the bonus system, suffice it to say that the three categories set forth in the Agreement that determines eligibility for the bonus are attendance generally, attendance at cell meetings at the facility, and quality and production worksheets. During the term of the Agreement, the employees' eligibility for a bonus was calculated every 6 months by the Respondent's payroll department and Gary Martell, Respondent's personnel manager. In the year 2000, the two bonus periods were August 1999 through February 2000, and February 2000 through August 2000. Martell testified that of the approximately 55 unit employees at that time, all but from 5 to 9 qualified for the bonus. During the term of the Agreement, numerous grievances were filed by employees who had been denied the bonus and the Respondent reversed itself on most of these grievances and granted the bonus to the complaining employees. By the last grievance period, however, the Respondent took a tougher stand, "We've been through this before, we're sticking to our guns."

[1] Unless indicated otherwise, all dates are in the year 2000.

[2] Counsel for the General Counsel's unopposed motion to correct transcript, dated October 11, 2001, is granted.

By the first week in August, Martell had completed the calculations for almost all the employees except for Rivera and a few other employees and all but about eight or nine qualified for the bonus. He testified that Rivera did not complete the paperwork necessary for the determination until the first week in September. One important issue with Rivera related to her attendance and whether some of her time off was covered under the Family Medical Leave Act. On reviewing Rivera's papers, Martell determined that she did not qualify for the bonus; although she received 5 points for the cell meetings and 5 points for quality and production worksheets, her attendance records were not enough to bring her to the required 14 points. In addition, she did not qualify for "extra credit" for cross-training or education.

On the morning of September 14, at about 8:30, Rivera approached Martell and asked, "Where's my bonus?" Martell said, "You did not qualify for the bonus." Rivera asked, "What do you mean?" Martell said that she didn't qualify because she missed time, like 66 hours. They began to discuss the paperwork, and Rivera said that he had done cross-training, and Martell, who testified that he knew what she was referring to, told her that the work she had performed on the milling machine did not qualify as cross-training. Rivera started to raise her voice and said that she would not fight with them anymore and that she was going to quit: "Consider this my two week notice and you'll get it tomorrow, in writing." A few minutes later Martell went to Rivera's department with her attendance sheets and a calculator. He told Lyle Evans, who had been Rivera's supervisor for 3 or 4 weeks, to call her over. When Rivera came over, Martell repeated that she did not qualify for the bonus. He placed her attendance sheets on the desk together with the calculator and told her to do the calculations. When she did so, the result was the same, less than the required points. Rivera then asked about cross-training that she allegedly performed on the milling machine. Martell and Evans showed her the Agreement and explained that because she was a production machinist, that was part of her job and was not considered cross-training. Rivera then asked about two other employees and why they received their bonus, and Martell told her that was not her concern. Rivera then said, "You know what? I'm not going to fight with you guys anymore. I'm going to quit and you'll have it in writing at that point." Martell said "okay," and Rivera walked away.

Evans testified that after this three-way conversation Rivera left the department and returned about 20 minutes later. She told Evans that she was sorry for what had occurred in the prior conversation, but that she had gotten upset. She also said that she was going to quit and felt that it was in her best interest to separate from the Company. Evans did not tell Martell about this conversation with Rivera until September 27, after Rivera's grievance meeting.

At about 12:45 p.m. on September 14, Rivera approached Evans and told him that "she wanted to take back the quit." Evans told her that he would notify Tom Hamilton, the manufacturing manager, of what she said. He then told Hamilton and left his office without a reply. Martell testified that sometime that afternoon or the following morning he learned from either Evans or Hamilton that Rivera said that she wanted to rescind her quit. After hearing this, Martell called an employer association of which the Respondent is a member, the American Arbitration Association, the Board, and the law firm that represents Respondent for advice. He went to speak to Rivera between 10 and 11 a.m. on September 15. He told her, "We're accepting your resignation." She said that she had told Evans that she changed her mind. Martell started to walk away, and Rivera said that she wanted to speak to her steward.

William Leist, who has been employed by the Respondent for 23 years and is the Union's president, testified that on about September 14 he heard that Rivera had been denied her bonus; later that morning, she told him that she was quitting because she couldn't take it any more. Leist told her not to quit out of anger, but to grieve the denial of the bonus. Sometime after lunch that day, Rivera approached Leist and told him that she had changed her mind and did not want to quit. He asked her if she had told Evans of her change of mind and she said that she had not. He told her, "Go down right now and tell him you rescind your resignation." When Leist saw Evans a few minutes later, Evans told him that Rivera had spoken to him. On September 15, at about noon, Rivera approached Leist and told him that the Respondent would not allow her to rescind her quit. "And she says you told me I have 24 hours to retract it. My comment was on my mother's grave, I wouldn't tell you that." Rivera worked every day, or almost every day, for the next 2 weeks until about September 29, which was her final day of employment with the Respondent. Nobody was hired to replace Rivera; Leist testified that nobody is doing her job. Counsel for the General Counsel did not call Rivera as a witness; counsel for the Respondent stipulated that no adverse inference should be taken from her failure to testify.

The obvious question following these events is why the Respondent refused to allow Rivera to rescind her quit and there was an extensive amount of testimony by Martell on this subject. He testified that he didn't allow her to rescind her quit because he knew that she was unhappy working for the Company and, eventually, she would have quit again. In addition, she did not like "the manufacturing environment. And there were times when she would get bored." He had previously encouraged her to go back to school because the Company offered tuition reimbursement, but she never did. Leist and Martell each testified that Rivera told a number of employees about her decision to retire; Martell testified that he took that "into consideration" in deciding not to allow her to rescind her quit because he wanted to set a precedent for the employees.

During the first period of Rivera's employment with the Respondent, her supervisor was Danny DesJardins. Rivera had numerous disagreements with DesJardins during the year and a half that she worked for him. The Union filed a large number of grievances regarding DesJardins, principally that he was performing bargaining unit work. Leist, personally, filed 15 to 18 grievances against DesJardins in the 17 years that he worked in his department. For almost the entire period that Rivera was working in his department she and the Union were attempting to get her transferred to another supervisor, but there were no vacancies. However, in August, Rivera met with Martell and Evans; Rivera told them that they should disregard the rumors they may have heard about her and that she was willing to work, and wanted a fair opportunity. Evans assured her that it would be a fresh start, and shortly thereafter she was transferred to Evans' department.

Prior to her transfer to Evans' department in August, Rivera had been quite active in filing grievances as well as charges on her own behalf with the Connecticut Commission on Human Rights. During the period of her employment with the Respondent, Rivera filed six or seven grievances; all but one involved

DesJardins, most of them for poor merit review ratings. In addition, she was a union steward for about 8months and in that position she filed grievances on behalf of other employees. Rivera filed a complaint with the Connecticut Human Rights Commission on April 18, alleging racial discrimination. By letter dated September 12, this complaint was dismissed. She filed another complaint with the agency on March 21, 2001, alleging that her termination was discriminatorily motivated. This complaint was dismissed on July 26, 2001. Leist has been the union president for 4 years and prior to that was the chief union steward for 7 or 8 years. He testified that to his knowledge the Respondent has not taken any retaliatory action against him or anyone else in the Union because they raised claims under the Agreement.

In order to establish disparate treatment toward Rivera, counsel for the General Counsel introduced evidence about a number of employees who voluntarily left, or announced that they were leaving, Respondent's employ and the Respondent allegedly tried to convince them not to leave or told them that if they were dissatisfied at their new job they could return to the Respondent's employ. Martell testified that at the September 27 grievance meeting Frank Periera,[3] the union steward, said that about 25 years earlier he got into an argument and was "walking out the door" when, apparently, somebody convinced him not to leave. Martell testified that nobody in the room could verify the statement. Leist testified that he has no first-hand knowledge of employees who had attempted to rescind their resignations prior to the situation involving Rivera, nor is he aware of situations where Respondent's managers attempted to convince employees not to quit after they announced their intention to do so.

Alex Aviles was employed by the Respondent from 1997 to 2000. On about July 1, he gave 2 weeks' notice of his intent to quit to Mark Trotter, his supervisor. He decided that he wanted to be a member of the Hartford Police Department; however, he failed the physical examination. Trotter asked Aviles to reconsider, but Aviles refused. Aviles also informed Hamilton of his decision and Hamilton also asked him to reconsider, and he again refused. Between that time and his last day of work with the Respondent, July 14, Hamilton again asked him if he wanted to reconsider and Aviles again said that he didn't. On July 14, or thereafter, Martell asked him if he would reconsider and he said that he wouldn't, even if he was offered $100 an hour. On his last day of work, Hamilton told him that he hated to see him go. Martell testified that when Aviles told him of his intention to become a policeman everybody congratulated him, but because he was a good employee he told Aviles that if it didn't work out he would have a job with the Respondent. Hamilton testified that he was aware that during his employment with the Respondent Aviles was also working full time, at night, for a security company. The only problem they had with Aviles was his attendance, which resulted from his working two full-time jobs. When he heard that Aviles had given his 2 week's notice, he assumed that he was leaving for the security job. On the day after Aviles gave his notice, Hamilton approached him and asked him if he was sure that he knew what he was doing, and Aviles assured him that he did. The reason he questioned Aviles about this was that he was a very good employee who was in a job that was hard to fill. It wasn't until about a week later that Aviles told him that he was leaving to join the Hartford Police Department and, at that point, Hamilton told him that was the right thing to do.

Melissa DeJesus had been employed by the Respondent for about 2 years. She testified that in about June she gave her 2-week notice to Trotter, her supervisor, because she did not like "what was going on" with Rivera, a friend and, at the time, roommate. "I just decided to leave. I just couldn't take it." Shortly prior to that time she received a warning from the Respondent for threatening or harassing a fellow employee with whom she was engaged in a discussion of the Rivera situation, "I was talking to her . . . about the Yasmin issue, that it's none of her business." She testified that within a week after she gave her notice Hamilton congratulated her on getting another job and asked her if she would change her mind, and she said that she wouldn't. Martell told her not to take the warning personally and on another occasion he asked her if she would consider returning to the Respondent's employ and she said maybe. Martell testified that DeJesus was given her warning because of the charge that she had threatened another employee. When he learned that DeJesus gave her 2 week's notice, he told her that the warning was addressed to the threat, and they still thought of her as a good employee. He did not ask her to reconsider her decision, but he did tell her that she should go to school because she was smart and good in manufacturing. He told her this "to plant the seed if she decided to go somewhere and it didn't work out, if she wanted to come back, she could come back, because she was a good employee." Whether she would be eligible for rehire, he testified, "I would consider her." Hamilton testified that after he learned that DeJesus had given her notice he approached her and told her that he hoped that she didn't feel that she had to leave because of the warning she had received, "It was over and done with, that the warning was issued, and that her future in the company was still solid." He asked her if she were sure that she wanted to leave, and she said that she was over the warning and had made up her mind and was going to a better job. Hamilton wished her luck.

Carl Groth had been employed by the Respondent for 8 years. He testified that he quit on April 27 because, "I got fed up with the place." He had received a job offer, which he was considering. Shortly thereafter, he was talking to a friend at work and his foreman told him he was giving him a verbal warning for talking too much and, "I just blew up at him, and I told him that was it, I quit, I give you a two-week notice." On the following day, he went to speak to Martell and told him that if he gave him his vacation pay he would leave immediately. Martell told him, no, work the 2 weeks. On the following day, Martell called him into his office, handed him his vacation pay, and told him that he could leave. Groth refused, saying that he gave 2 week's notice and was staying for the 2 weeks. After a steward joined the discussion, Martell agreed to pay Groth for the balance of the 2 weeks, and let him leave that day. About a month later, Groth called Martell to ask about medical insurance. Martell asked him how he liked the new job and Groth said that he didn't like the job, he was sick all week because of the smell in the plant. Martell asked him if he would like his job back and Groth said that he would, and Martell said that he would see what he could do, but he couldn't promise anything. The was the last time they spoke. Martell testified that Groth did not get along with his supervisor. When Groth offered to leave immediately, Martell originally turned him down and told him to finish out his 2 weeks. However, the conflict between Groth and his supervisor continued to be heated and Martell

[3] Periera did not testify.

was concerned that it would develop into a fist fight. At that point, he agreed to pay Groth for the balance of the 2 weeks and let him leave. Sometime after Groth left he received a call from Groth or his wife saying that he needed a letter from the Respondent saying that he was not covered by their medical insurance so that his wife could pick up the family medical insurance. During that conversation, Groth told Martell that he made a mistake in changing jobs because the smell at the new plant made him sick. He testified:

> Carl wanted to see if we would take him back. And he mentioned to me that if the company took him back, we could put him on some probation for about a year and he would be a good employee. And when he mentioned that to me, I said to him I can't promise you anything, I'll go talk to Tom Hamilton and Jay Washburn." When he discussed it with Hamilton, Hamilton's response was: "Don't call him back, just leave it, it will die." That's what he did.

Martell testified, "The practice that we have used, and it's not very often it comes up, but when someone is very unhappy with the situation at work and they put in their resignation . . . or they quit, we basically just wish them the best and that's it." He testified that in late 1998, the boss retired and his son took over. The new boss didn't want to have a secretary, so his father's secretary was reassigned to work in the sales department. She was unhappy in her new job because she was no longer the "head honcho" and she quit, giving 2 week's notice. A few days later she decided that she wanted her job back, but they decided that because she was unhappy with the situation, they would not let her rescind her quit. He testified that the two instances discussed above and the situation involving Rivera are the only situations at the Respondent that he is aware of where an employee attempted to rescind a quit.

There was a third step grievance meeting conducted on September 27 regarding Rivera's grievance that the Respondent refused to permit her to rescind her quit. The Union's position was that she quit in a moment of anger and should be allowed to rescind it. The Respondent's position was that she quit on two separate occasions on September 14. On September 29, Washburn denied the grievance. The denial states as follows:

> Ms. Rivera effectively ended her relationship with this company when she verbally notified the Personnel Manager and her immediate supervisor of her resignation on September 14, 2000.
>
> Management rejects the primary argument presented by representatives of Local#249: that Ms. Rivera's resignation was the product of a fit of anger and thus should be forgiven and forgotten; and that, by not fulfilling her original intention to issue a written resignation the following day, this makes her verbal resignation invalid.
>
> Her resignation may have been overturned if not for a discussion she had with her supervisor, Mr. Lyle Evans, which took place 15 to 30 minutes after her initial pronouncement to Mr. Gary Martell, the Personnel Manager, that she intended to resign her position. This discussion, along with her outwardly calm demeanor at the time of this dialogue, rules out the argument that Ms. Rivera's resignation was merely the product of a fit of anger.
>
> A resignation is not a necessary part of the procedure, nor is it past practice, for resigning a bargaining unit position. Consequently the company is not obligated to rescind Ms. Rivera's resignation simply because she did not issue this in writing.
>
> Based on the facts of this case, management concludes that Ms. Rivera's resignation was not just a momentary fit of anger but was a decision made upon her free will, a decision that she freely spoke to at least one individual about (Mr. Lyle Evans) after her initial anger subsided. She had ample opportunities immediately after her initial fit of anger to change her mind and rescind her resignation, but Ms. Rivera chose to stick with her decision through, what management thinks, was a reasonable "cooling down" period.
>
> As such, the resignation stands and Ms. Rivera will no longer be employed at the Merrow Machine Company after 3:30 p.m. on Friday, September 29, 2000.

Leist then requested that the Respondent agree to arbitrate the issue, but the Respondent refused.[4]

III. ANALYSIS

Counsel for the General Counsel alleges herein that by refusing to allow Rivera to rescind her quit of September 14, Respondent violated Section 8(a)(1) and (3) of the Act. In arguing for these violations, counsel for the General Counsel relies principally upon Rivera's prior actions in filing grievances and charges against the Respondent ("she had long engaged in concerted protected activities and was a thorn in Respondent's side"), and Respondent's allegedly shifting defenses and lack of a consistent past practice in dealing with employees who announce an intention to quit. Counsel for the Respondent has two principal defenses herein. Initially, he argues that this case must be dismissed under *Wright Line*, 251 NLRB 1083 (1980) because there is no evidence that the Respondent had any antiunion animus or that it took any action against Rivera because she exercised protected rights. Counsel further argues that Rivera did not engage in any protected concerted activities on September 14 because her resignation did not constitute an attempt to assert her rights to a bonus.

I should initially state that I found Martell to be a witness whose testimony I found to be credible and believable, and in those situations where his testimony conflicts with the testimony of other witnesses, I credit his testimony. I do not mean to indicate that I found counsel for the General Counsel's witnesses incredible, only that my impression was that Martell was a *more* credible witness. Under *Wright Line,* supra, the General Counsel has the initial burden to establish a prima facie case sufficient to support the inference that the individual's protected conduct was a "motivating factor" in the employer's decision to terminate her. If the General Counsel has satisfied this requirement, the burden then shifts to the employer to establish that the employee would have been discharged "even in the absence of the protected conduct." In the instant matter, "terminate" and "discharged" should be changed to a refusal to allow the employee to rescind her quit. Although I am not completely satisfied with Respondent's explanations for its refusal to allow Rivera to rescind her quit, I find that General Counsel has not sustained his initial burden under *Wright Line*. The overriding reason for this failure is the lack of any evidence herein of union animus on the part of the Respondent or

[4] The Agreement provides for arbitration only in cases of suspension or discharge. The Respondent's position was that Rivera's case was neither a suspension nor a discharge, so it was not arbitrable.

evidence of animus directed at Rivera because her protected concerted actions in filing charges and grievances on behalf of herself and other employees. The Respondent and the Union have maintained a collective-bargaining relationship for in excess of 20 years. Leist testified that in his 23 years as an officer of the Union to his knowledge the Respondent has never taken any retaliatory action against him or any union member for pressing claims under the Agreement, or prior contracts. He also testified that of the numerous grievances that the Union filed regarding bonuses under the Agreement the Respondent granted most of them. As regards the allegation of animus toward Rivera for her grievances and charge filing, these occurred while she was working in DesJardins department. It appears to me that if the Respondent harbored animus toward her is, as alleged, it would not have transferred her to Evans' department, creating a "clean slate."

That is not to say that this case is free from doubt. Respondent's refusal to allow Rivera to rescind her quit is puzzling and its explanation of its rule against allowing employees to rescind quits is not as definitive as Respondent would have us believe. As counsel for the General Counsel sets forth in his brief, Respondent, at different times, gave different explanations for its refusal to allow Rivera to rescind her quit. Martell testified that his reason was that Rivera was an unhappy employee and, he assumed, that if he let her return she would subsequently quit again. In addition, that she told a number of other employees that she was quitting was an additional factor in his not letting her rescind her quit. Washburn's September 29 letter rejecting the grievance gives a different reason: the fact that she had allegedly calmed down when she told Evans on September 14 that she was quitting, a conversation that Evans did not inform Martell and Washburn about until after the September 27 grievance meetings. As regards the disparate treatment allegation, three former employees testified to entreaties from Respondent's agents. After Aviles announced his intention to quit, Trotter, Hamilton, and Martell each asked him to reconsider, but he refused each of these requests. Martell and Hamilton testified that they asked Aviles to reconsider his decision (prior to learning that he was leaving to apply to the Hartford Police Department) because he was a good employee whose only problem was attendance, which was caused by the fact that he was employed at a security company in addition to the Respondent. DeJesus gave the Respondent notice of leaving after receiving a warning for threatening another employee in a discussion involving Rivera, a friend of DeJesus. Martell and Hamilton each told her that she should not take the warning personally, and asked her to either reconsider or asked her if she would consider returning to the Respondent's employ. Martell told her that she could return to the Respondent's employ because she was a good employee, regardless of the warning that she had received. As regards Groth, I credit Martell's testimony about the telephone conversation they had after he left. When Groth asked about the possibility of returning, Martell was noncommittal, saying that he would discuss it with Hamilton and Washburn. When Hamilton told him not to call him back, that is what Martell did, and that was the end of it.

The evidence therefore establishes that after Aviles and DeJesus gave their notice to the Respondent, Respondent's agents attempted to convince them to change their mind, unsuccessfully. The difference between these situations and Rivera is that the Respondent considered them good employees with only one blemish for each–Aviles' lateness and DeJesus' warning. They did not hold Rivera in the same high regard, and I find insufficient evidence that the reason for this different attitude was caused by Rivera's union or protected concerted activities. Respondent's refusal to allow her to rescind her quit may have been arbitrary or invidious, but I conclude that it was not discriminatory within the meaning of Section 8(a)(1) and (3) of the Act.

Counsel for the General Counsel cites *EDP Medical Computer Systems,* 284 NLRB 1232 (1987); and *Star Trek: The Experience,* 334 NLRB No. 29 (2001), to support its position herein. These cases can be differentiated from the instant matter. In *EDP* the evidence established that the employer considered the discriminatee an "unhappy employee" because she saw her sitting with union supporters at a hearing, clearly exhibiting animus toward the union. Further supporting the General Counsel in that case, the employer testified that they did not agree to take her back because they had hired somebody to replace her, when, it turned out, that was not true. In *Star Trek*, the Board found "no doubt" of the employer's hostility toward the union and therefore found that the General Counsel had satisfied his *Wright Line* burden of demonstrating that the employee's protected union activities was a substantial or motivating factor in the employer's actions against her. As stated above, that is the evidence that is lacking herein. I therefore recommend that the complaint be dismissed herein.

CONCLUSIONS OF LAW

1. The Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Respondent did not violate Section 8(a)(1) and (3) of the Act as alleged in the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

Having found and concluded that the Respondent has not engaged in the unfair labor practices alleged in the complaint herein, the complaint is dismissed in its entirety.

Dated, Washington, D.C. October 26, 2001

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.